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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 99-075

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section Comm 112.045 provides that the department may allow a person to claim a certain amount of tax benefits. Section 560.785 (1), Stats., on the other hand, provides that the rules promulgated by the department shall allow a person to claim a certain amount of tax benefits. There appears to be a conflict between the statutory requirement that the rules “shall” allow a person to make a claim and the rule providing that the department “may” allow a claim. This apparent conflict should be reviewed.

2. Form, Style and Placement in Administrative Code

a. The material in SECTION 1 of the rule may be deleted because it is not necessary to amend the table of contents. Also, unless it is being amended, the title of the chapter being amended need not be shown and should, therefore, be deleted from the rule.

b. The word “definitions” in the treatment clause of SECTION 2 of the rule should be deleted.

c. In SECTION 2 of the rule, the section number of the rule should be listed in the amendatory provision. Thus, after the treatment clause, “Comm 112.02” should be inserted before (2m). The entire rule should be reviewed in light of this comment.

d. SECTIONS 4, 5, 8 and 9 of the rule amend various provisions of existing rule sections. However, because each provision of those sections are not being amended, it is not necessary to recreate in this rule all of the provisions that are not being amended. Thus, the treatment clauses of those SECTIONS should be revised to identify only those provisions which are being amended and then only those amended provisions should be shown in the rule.

e. Rather than striking throughout the entirety of s. Comm 112.06 (2) (c) and (d), those paragraphs can simply be repealed.

4. Adequacy of References to Related Statutes, Rules and Forms

Section Comm 112.045 (6) should end with the phrase “under this chapter.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the first sentence of the analysis, the word “the” should be inserted before the word “Wisconsin.”

b. The amendment to s. Comm 112.02 (3m) creates a definition of “Development zone” which refers to two development zone programs. However, s. Comm 112.02 (4) of the current rule defines “Development zone program” as the program administered under ch. Comm 112. At a minimum, these two definitions are confusing to readers of the rule. They may also be conflicting to some extent. Can these definitions be clarified?

c. In s. Comm 112.045 (1) (b), it appears that the sentence should conclude with the phrase “and who is not a member of the target population,” in order to fully comply with the provisions of s. 560.785 (1) (c) 2., Stats.

d. In s. Comm 112.045 (3), the connection between distributing tax benefits over a period of tax years and the job creation phases of the project is not readily apparent. The rule should be clarified to better identify the connection and the criteria that will be used to distribute the tax benefits over a number of years.

e. In s. Comm 112.045 (4), it is not clear which person the phrase “the person’s environmental remediation activities” applies to. Does it apply to the person applying for the tax benefit or to “another person”? The rule should be clarified.

f. In s. Comm 112.045 (5) (intro.), the phrase “this rule” should be replaced by the phrase “the requirement in this subsection.” In addition, the phrase “for any of the following reasons” should be inserted immediately before the colon. Further, the term “it” in pars. (a) and (b) should be better identified. For example, in par. (a), “it” appears to refer to the department. In par. (b), “it” appears to mean “granting an exception.” The rule should be clarified. Finally, in par. (b), the phrase “the changes taking effect as a result of 1997 Wisconsin Act 27” should be replaced by the specific effective date of the changes.

g. In s. Comm 112.045 (7) (a), what is meant by the phrase “well below the state average”? What criteria will be used to determine if a wage is “well below” the state average as opposed to just “below” the state average? Also, what will be used to determine what an area is? Is area confined to a municipality, county or region? The process for making these determinations should be identified in the rule.

h. In s. Comm 112.045 (7) (b), must the applicant for the tax benefit commit to the “outline” of the “pay progression”? In other words, if an applicant submits some sort of pay progression outline which will reach 150% of the minimum wage within two years, but does not follow the outline, and then pays his or her employees a qualifying wage at the end of the two-year period, will the applicant be eligible for the tax benefit? The rule should be clarified. Also, the phrase “this requirement” should be replaced by the phrase “the requirement in par. (a).”